

DOSSIER SPÉCIAL | SPECIAL FEATURE

Tax incentives in favour of public utility in Switzerland: an incomplete debate?

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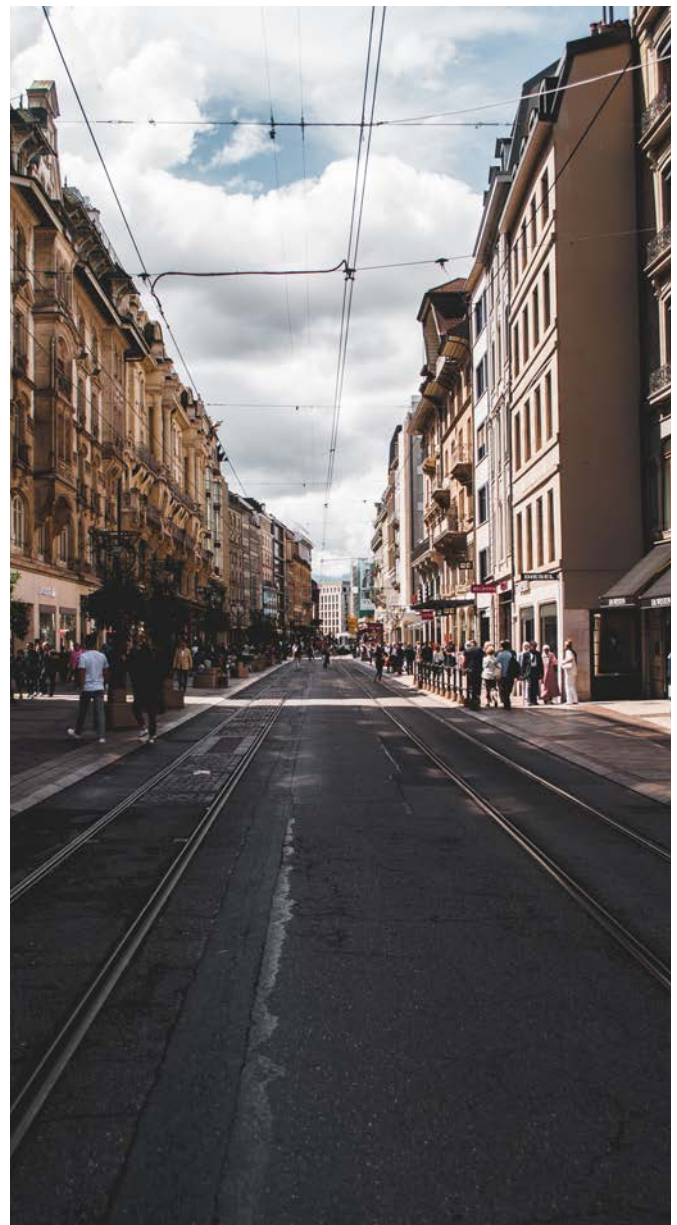
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Tax incentives in favour of public utility in Switzerland: an incomplete debate?

Abstract

Tax incentives in favour of public utility in Switzerland, while they are subject to some debate in terms of amounts or rates, are generally not discussed as a public policy tool. This article, based on the literature on tax incentives for public purposes, would like to shed light on the issues at stake. To do this, we will first consider tax incentives for public purposes as a public policy tool, before examining the stakes of such a tool, in the light of public policy literature and political philosophy, but also from the point of view of political authorities, based on the Swiss case. We will see that, beyond these debates, many interventions - whether by interest groups, lawyers or parliamentarians - are promoting this tool. The question of reform proposals in this area will then be asked to see how far the concerns of political actors are from the reflections of economists, politicians and philosophers who have addressed these issues.

Keywords

Tax incentives, philanthropy, taxation



Introduction: Tax incentives as a public policy tool

Tax options, as with preferred tax instruments [1], are carriers of political, economic and social choices, which refer to different conceptions of social justice, redistribution and efficiency [2]. Offering the possibility to avoid taxes is in this way a public policy tool [3].

Through fiscal tools, governments financial incentivize individuals to engage in a particular code of conduct [4]; they provide financial incentives to attain specific political objectives.

Taxation is a tool amongst others, meaning governments can act in different ways: at times they resort to direct spending programs (for example, State social policies or subsidies to organizations), at others to special taxation arrangements. In the same way, fiscal expenditures can come in different forms: tax breaks, special exclusions from income, deductions, tax credits, tax deferrals, preferential tax rates, etc.

These choices have an impact on the implementation of the policy, as well as on the actors, within administrations, who accompany these policies: as Salamon reminds us, “What makes the use of different instruments so significant is that each instrument has its own distinctive procedures, its own network or organizational relationships, its own skill requirements - in short, its own ‘political economy’” [5]. The author also states that “the central reality of many of the newer tools of government action is that they vest a major share- perhaps even the lion’s share- of the discretionary authority involved in the operation of public programs into the hands of one or another non-federal, often non-public, third-party implementer” [6].

There are many reasons that could favour the use of tax exemptions as a public policy tool. McDaniel [7] lists a number of arguments: 1) First off, this could give the impression that no public expenditure is actually involved, as there is no direct expenditure; 2) second, this type of policy seems to be of great simplicity, not seeming to require any governmental bureaucracy for its implementation; 3) also, this tool has the advantage that the program’s beneficiaries don’t psychologically feel that they are the beneficiaries of public subsidies; 4) or even, this tool allows for an easier political process as it is exposed to less opposition than direct expenditures. 5) Finally, a program adopted in the form of a tax expenditure is generally considered to have less political visibility than a comparable direct spending program. Those who benefit from tax expenditure programs can see an advantage as direct spending programs tend to be the objects of regular and more in-depth examinations.

Simultaneously, and beyond these few elements, three points mark important changes in the political economy of such a tool in comparison to direct spending: first, 6) in terms of priorities regarding expenditures. Every tax expenditure automatically has first priority over all direct expenditure programs (as the budget available to Parliament is the product of tax collection) - which means that the abundance of charitable donations has a priority over the direct financing of other sectors (such as education, the army, agriculture). Next, 7) the decision process for

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the implementation of projects is delegated to the private sphere instead of to the government - such as the case with charitable donations: the deduction for charitable donations is, in fact, a government program of gift matching to encourage charitable donations, but the choice of the organizations who will benefit is left to the individual donor. Finally, 8) this brings into play other institutions and actors of public policy than for direct spending: the program will be elaborated and administered by those whose main expertise is not in the field concerned by the action. “*Les fonctionnaires [de l’administration fiscale] sont formés pour être des experts en droit et des percepteurs d’impôts ; ils ne sont pas des experts formés dans les programmes environnementaux, le logement, les économies d’énergie et tous les autres domaines de la vie sociale et économique dans lesquels les programmes de dépenses fiscales ont été introduits*” [8]. In this way, in the case of public utility, its definition tends to be brought up from a taxation angle instead of from the angle of knowing if the programs promoted by organizations would be accepted if they were to be financed through direct subsidies.

Tax incentives: local and temporal variations

Largely trivialized today, the use of tax exemptions for public purposes is far from being universal or timeless. This can be seen by comparing national contexts, and limiting ourselves to the question of charitable donations and public utility organizations, the frameworks, incentives as well as the controls vary greatly from one country to the next. It can even be said that what was once considered as public utility has evolved throughout the decades.

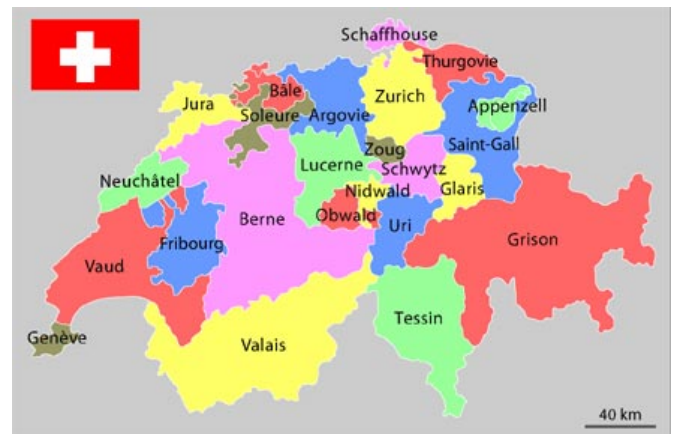
The European Foundation Center’s report [9], which determines the different categories of objectives

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that are accepted for the recognition of public utility, which gives the right to exemptions [10], shows a significant heterogeneity between European countries regarding the definition of these objectives. Certain countries, such as Malta or Bulgaria are very restrictive, whereas other countries such as Austria or Switzerland appear to be very open.

In the same way, if regulatory and taxation frameworks have become more liberal in the majority of European countries in the last decades [11], there are still great variations in terms of exemptions according to these same countries. In France, the tax bureau reimburses 66% of the donation the following year (sometimes up to 75% for some donations) through a tax credit, up to a limit of 20% of the donor's taxable income. Sweden, and to limit ourselves to the Direct Federal Tax (DFT), allows for donors, as of the amount of 100.-, to deduct donations from their taxable income, also up to 20% of their income. However, this 20% limit is not universal. It is 2% in Croatia, 4% in Ukraine, 25% in Russia and 100% in Cyprus. If these countries chose as a maximum amount open to an exemption to be a percentage of taxable income, others, on the contrary, have chosen nominal amounts or a combination of percentage and nominal amounts. In Belgium, monetary donations of over 40 euros are deductible up to 10% of taxable income, but with a maximum of 380 550 euros. In Denmark, donations over 70 euros are deductible, but up to a maximum of 1950 euros. In Sweden, the income tax of individuals can be reduced by 160 euros at most if the donor makes a donation of 640 euros to organizations in the social State or science sectors. Of course, some countries have no financial incentives. Such is the case in Serbia and Finland.

Even on Switzerland's level, there are significant variations. Inter-cantonal differences concern the maximum amount allowed for exemption (ranging from 5% of income in Neuchâtel to 100% in Bâle-Campagne), and the limitation or not for foundations to conduct their activities outside of their canton or of Switzerland itself. Furthermore, if certain cantons only consider donations over 100.-, others, in contrast, have no limit regarding the minimum amount of a donation. Differences also concern the flexibility given to cantonal fiscal authorities, while some cantons have strict limits regarding the maximum percentage of taxable income eligible for exemptions, others give cantonal authorities the possibility to increase the percentage on a case by case basis [12].



Carte des cantons Suisse
Source: jeretiens.net

Moreover, these legal frameworks have continued to evolve over the past decades, be it on the European level (Italian reform of banking foundations in 1990, Austrian law on private foundations in 1993, Spanish law on foundations in 1994, or even the Swedish law on foundations in 1996) or on the Swiss level (the last revision of the Law of Foundations implemented on January 1st, 2006, see *note* [13]). On a longer time scale, Switzerland has also witnessed an evolution regarding the notion of public utility; the first half of the 20th century following a restrictive conception of “public utility” activities. This limited exemptions to charitable or altruistic institutions whose objectives were to help others, be them needy, sick, or very old[1]. It is only later that, other than when physically coming in aid to individuals, altruism will be invoked for humanitarian aid, science, or social and cultural causes for example. The notion of altruism was then

transformed, no longer being defined by the characteristics of the targets of the action, but by the way in which the public utility activity is carried out.

This latter could not be done to the benefit of the directors, members or of their relatives. In the same vein, a second evolution characterized the 20th century regarding what public utility actions give the right to tax exemptions. If fiscal authorities initially considered “all activities that discharged the State of one of its legally prescribed tasks” as being of public utility, a disconnect between State affairs and public utility would later appear. Today, what fits into “public utility” is no longer limited to the tasks legally prescribed by the State, but also: activities that the State could engage in if they had the means[14]. It is no longer a question of overlapping public utility over public service, but on the contrary, allowing for the independence of the first from the second.

A public policy tool that is the object of numerous critiques (but of few debates)

While tax incentive policies, be they applied to public utility organizations or donations in their favour, are undeniably successful to a certain extent, they are also accompanied by much critique [15]. The latter cover what the literature coins as a double “plutocratic bias”: since the exemption system in favour of public utility organizations lowers taxable income by the amount of the donation, the financial benefit proportionally increases according to the income - and tax- bracket - of the person. To limit ourselves to the case of the DFT in Switzerland [16]: a taxpayer living alone with a taxable income of 50'000 CHF will pay 444.95 francs in DFT per year. If they make a donation of 5'000 CHF to public utility organizations, their taxable income will be considered to be only 45'000 CHF and will pay no more than 312.94 CHF in DFT. Their donation of 5'000 CHF allows them to save 132.01 in taxes (or only costs them 4867.01 CHF). If we now consider the case of a taxpayer living alone with a taxable income of 150'000 CHF per year and who makes the same donation of 5'000 CHF, their taxable income will go down to 145'000 CHF, and their gain will be greater: they will only pay 6983,60 CHF of DFT

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instead of 7533.60 CHF. Their donation will then allow them to save 550 CHF in taxes (or will only cost them 4450 CHF) [17]. For someone who has a taxable income below 17'800 CHF, minimum income at which one pays DFT, a donation of 5000 CHF would not decrease their DFT. The cost of the donation is thus 5000 CHF in such a case. The tax system of indirect funding of public utility organizations can then be considered as a “regressive” system where the less wealthy pay, through their direct or indirect taxes such as the TVA [1] , to support the tax gap left by fiscal expenditures in favour of the philanthropic choices of the wealthier population.

The “plutocratic bias” is not only present in the fact that the deduction mechanism favours the wealthy: it can also be found in the choices of public utility projects or organizations that are supported. Reich[1] demonstrates - in the case of the United States - that philanthropy is often considered as the fact of caring for others - and that this argument justifies the tax exemptions that are awarded today - when in reality a very small portion of donations go towards those in need. In reference to research by Indiana University’s Center for Philanthropy in 2007, he observes that only a small portion of donations goes towards needy populations to meet their needs, and that the wealthier the donors are, the less they give to organizations whose objective is to come in aid to the most impoverished. In 2005, American millionaires only dedicated 4% of their donations to help the poor, preferring to fund culture, scientific research and health; donors with less than 100 000 dollars of income, for their part, dedicated over 10%



of their donations to help the poor. Reich states that “philanthropy [for philanthropists] appears to be more about the pursuit of one’s own projects, a mechanism for the expression of one’s values or preferences rather than a mechanism for redistribution or relief for the poor” [19].

Proof of the social efficiency of tax deductions is thus limited because fiscal incentives tend to not only be regressive, but also to direct taxpayer dollars towards expenditures favoured by the rich.

This statement also seems valid for Switzerland. In listing the “significant individual donations of the past few years”, AvenirSuisse [20] shows how scientific research and the construction and expansion of museums or cultural institutions are the main beneficiaries in terms of the distribution of these donations. Out of the 17 significant donations listed, 7 went to the creation of museums or other prestigious cultural institutions and 8 went to scientific research or to hospitals. Only 2 seem to distinguish themselves from these categories; one went to the construction of an emergency medical service in the donor’s municipality, and the other to a gym. Helping the poor is nowhere to be found.

A third critique, stemming less from a political philosophy perspective and more from an economics approach, focuses on the evaluation of the efficiency of these incentives as public policies. Monnet and Panizza [21] show how while much research [22] (many of which have contradicting results) seek to observe and measure, on the short, medium and long term, the incentivizing dimension of tax deductions, thanks to econometric techniques (by observing if a tax reduction leads to an equivalent increase in charitable donations), the question of social

efficiency is much harder to study. It is thus more common to find it assumed rather than proven. In fact, to be considered efficient, a charitable tax deduction should lead to the creation of social goods whose value is superior to the social goods that would have been produced by the State with the amount of lost taxes. To evaluate an optimal tax structure from a social point of view, one would have to estimate the social benefits of donations and compare them to the social benefits of public expenditures. The question then arises of the problem of matching the foundations’ objectives with the problems that public powers would support [23]. Do they match up? Or are they in contradiction to the programs funded by the public powers? Monnet and Panizza ask, with a certain irony: if someone who is passionate about the well being of cats donates 1000 CHF to a foundation who takes care of abandoned cats and after tax incentives, the donation only costs them 750 CHF, the government’s loss of collected taxes is 250 CHF; is we suppose that these lost taxes could have been used to help orphan children, how much more should society as a whole care about the wellbeing of abandoned cats versus the well being of orphan children for the tax deduction to be considered efficient from a social point of view?



These doubts regarding the efficiency of tax incentives are also expressed by political authorities. In Switzerland, the Federal audit office, in their analysis of Swiss foundations, reminds us that “no estimation is available on the effects of tax exemptions for foundations or of all organizations exempt from taxes themselves” [24] and that “we do not have information on the economic impact of the yearly distribution of 1.5 to 2 billion CHF that takes place in Switzerland and abroad (by foundations recognized as being of public utility)” [25]. Finally, they note that “The more foundation activities there are, the less public funds are available (for example for education, culture, social affairs, sports or environmental protection)” [26].

“The question then arises of the problem of matching the foundations’ objectives with the problems that public powers would support. Do they match up?”

The Federal Tax Administration (FTA) [27], on its part, serves to remind that the OECD [28] proposes a limitation of deduction possibilities. It regrets the lack of interest concerning this issue [29], but emphasizes that in the few studies evaluating the effects of tax concessions [30], most of the time tax relief is supposed to encourage the taxpayers to engage in a determined behavior. However, the tax benefits will above all display spin-off benefits, meaning that expenditures that would have been made are co-financed even if the tax liability was not reduced.

Therefore, since the efficiency is not guaranteed, Reich [31] suggests another reason for tax incentives. According to what he calls “pluralism logic,” we can justify the favorable tax treatment of philanthropic donations by the fact that tax subsidies contribute to the creation of a “diverse, decentralized and pluralistic voluntary sector,” [32] an essential prerequisite in a Tocquevillian perspective to have a successfully operating liberal democracy. As claimed by Reich, the true public good supplied by philanthropic organizations may lie less in the goals they are pursuing than in the associating community life they are creating, and in the possibility offered to citizens to “vote” for a project of social action that they consider to be the most directly efficient - without the mediation of political institutions. While the State traditionally seeks to satisfy the preferences of the median voter - which

can lead for example in terms of culture to only fund relatively universal charities rather than counter-cultures or alternative cultures, philanthropy would ensure the pluralism. In this regard, it would be the strength of the third sector and the pluralism in and of themselves that would be considered the public good.

It would surely be welcomed to promote pluralism. However, for Cagé [33], we cannot talk of pluralism if philanthropy reflects first and foremost, the preferences of a small group of wealthy people. For her, “Reich is right to emphasize that when you want to satisfy the preferences of the median voter you take the risk of funding only universal charities. Nonetheless, sticking to a system where the State responds to the preferences of the median voter is not compulsory. On the contrary, we could offer each citizen (...) (rather than a handful of philanthropists) the possibility of funding the art foundations of its choosing. It would ensure the representation of the pluralism of citizens’ preferences, without resting on the preferences expressed by a minority of wealthy people.” [34] Likewise, the argument that the funding of philanthropists would foster pluralism might be wrong. Reich wrote, “is it essential to fund the practice of freedom to produce a vibrant civil society? After all, there was no tax deduction for charitable donations when Tocqueville did his tour in the USA. (...) We can say without exaggeration that the growth of non-profit organizations in the USA and the use of charitable tax deductions coincide with the decline in civic engagement in community life, at least if we consider the literature inspired by Robert Putnam. The existence of non-profit organizations managed by professionals may have contributed to the calcification of civil society.” [35] The “pipeline” or “restraint” system of social movements by the largest philanthropic foundations have also been documented [36]. If what matters today for the third sector organizations is less the number of volunteers than to raise enough funds to operate, aren’t NGOs led to articulate their course of action as well as their goals depending on the preferences of the most privileged- those who contribute financially [37]?

Moreover, in her publication, Cagé raises an interesting question: is the system designed for everyone or for a small minority? In the case of

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election financing in France, her conclusions are explicit. The system isn't thought up so that each of the 37 million households benefit from a public contribution of 5,000 euros [here we're talking about the tax deduction currently offered to those who give around the 7,500 euros ceiling to each political party,] the total cost for the State would be of 165 billion euros. In Switzerland as well, increased possible tax deduction from 10 to 20 % of the income or net income as part of the Schiesser initiative (implemented in 2006), only seems feasible because it concerns a small minority of people. The Federal Council has also reported that it is possible to implement such a reform simply because “1 or 2 % of the taxpayers would benefit from higher deductions if the limitation on deductibility were to rise”, and knowing that “tax revenue deduction (e.g., the reduction of direct federal tax) (...) shouldn't be significant.” Inversely, in 2011 when the Streiff-Feller motion (11.3083) offered a tax credit for the expenses incurred by people during charitable work, the Federal Council used a counter-argument to reject this proposal. Although they conceded the existence of an injustice, they estimated the potential consequences- if every taxpayer asked for such a tax credit- at “580 million Swiss francs just for the direct federal tax, provided that all taxpayers asked for the highest deduction offered (3,000 francs).”

The FTA [38] holds the same position, when they restated a message from the Federal Council dating back to December 15th, 1986 in support of a bill on financial aids and allowances; that the financial aids in the form of tax breaks: a) violate the constitutional principle of taxation based on economic capacity, and thus, violate the tax fairness principle if they are used to reach non-fiscal goals”; b) “restrict the

authority's influence on the activity to be promoted because they cannot be attached to terms or obligations”; c) “don't allow for the evaluation of their financial consequences. They thus escape from forms of control, and in consequently, are not subject to modifications and repeals, therefore, risking without notice, to transform themselves over the years into a truly undesirable scattering of subsidies”; finally d) “the lack of reference to subsidies in the form of tax cuts in the Confederation's books is contrary to the principles of transparency” and “tax cuts are hidden subsidies that remain largely unregulated by the parliament budget-wise.”

This last point has been particularly present in the speeches from Swiss authorities since the early 20s; if they refuse to see tax reduction on income (or net income) rate increase significantly, it is because they primarily fear that “by allowing taxpayers to decide the allocation of certain funds to specific tasks, it might somehow delegate the budgetary power to them [whereas it should be left to the Parliament.]” [39]

Legislation of interest and parliamentary reforms in Switzerland: For which exemptions?

Despite the political authorities' expressed reluctance to change, the demands in favour of reforms favouring philanthropy, be they from interest groups, lawyers or parliamentarians, are numerous.

First, the matter of interest groups, falling in line with the European Center efforts that compare national rights and aim at promoting more and more liberalism [40]. In Switzerland, we notice various initiatives, parallel or combined to parliamentary initiatives, that seek to liberalize the Law of Foundations or to foster accessibility to tax exemptions. One example is the work done by ProFonds (the Swiss umbrella association of non-profit foundations and associations of all forms of activity and financing) or the reports issued by Fondation Lombard Odier in collaboration with FSG [41] or AvenirSuisse [42]. In their report *Le monde des fondations en mouvement, Idées pour un*

mécénat moderne, considers alongside the Luginbühl initiative (see *below*), that “the option of allocating significant donations spread over several years, would constitute a meaningful reform in Swiss tax law, as is already possible in Germany. Such a measure would increase flexibility for donors.” [43]

On to the lawyer’s side, taking an interest in foundations or philanthropy, law professionals, mentioning the contribution capacity principle [44], also offer various legislative reforms known as “legislation of interest.” These reforms may address the Law of Foundations and the requirements opening the possibility of tax exemptions for charitable purposes [45] and more specifically on the tax system [46]. Lawyers rarely question the tax relief system itself; Mettrau claims that tax exemption for charitable organizations must be considered to follow tax fairness: “Tax fairness justifies that we exempt an institution working towards the same goal as the community collecting the tax. If collecting funds is a State duty that will enable it to carry out its tasks, tax exemption for charitable organizations performing similar activities should not constitute an obstacle to this fundamental principle.” [47] More broadly, proposals to “improve” the legislative framework are generally going toward more permissibility. For Oberson for example, an increase in recovery rates is warranted because “values have been shifting and the Swiss society is readier [than before] to accept an increase in recovery rates.”[48] The widespread interest of citizens and politicians in philanthropic actions would



Photo: Bundeshaus, Parlement à Bern en Suisse
Source: Novembre 2013 Petra B. Fritz/Flickr

“The option of allocating significant donations spread over several years, would constitute a meaningful reform in Swiss tax law...”

have resulted in the sector's growth, and it would justify an increase in exemption rates.

Finally, pertaining to Parliament, while Swiss Law on foundations has not changed since the revision, [which entered into force on January 1st, 2006, following the parliamentary initiative known as Schiesser (00.461) filed on December 14th, 2000] calls for reform of this Law and the improvement of framework conditions has not ceased since. Reference can be made to Werner Luginbühl’s motion (09.3344) introduced in March 2009 and made with the objective to “strengthen Switzerland’s attractiveness as a prime location for foundations” and another parliamentary initiative from the same member “to strengthen Switzerland’s attractiveness for foundations” (14.470) filed on December 9th, 2014.

We define these three interventions [49] by the fact that they do not question public “purposes,” or the type of field or actions recognized as being of public interest [and it may lead to exoneration for organizations and a tax break for donors] but tend to introduce more flexibility to the rules governing the organization and running of legal entities recognized to be of public utility. The Schiesser initiative thus led to an increase in legal persons or activities that could be recognized as of public utility and are entitled to tax-deductible donations. . It led to a change concerning maximum taxable income (or net revenue) that could be exempt from taxes - the effective rate moving from 10 to 20 % on a federal level. The initiative also led to the questioning of the principle of the permanence of a private foundation's legal status. Finally, it obtained a change in the amendment of the criteria distinguishing donations from sponsorship, under the terms of the VAT Act, so that increasing donor visibility did not correspond to a loss in tax mean a loss in tax exemption due to

the presence of a certain form of 'compensation'. Luginbühl's interventions (09.3442 et 14.470) point in the same direction when, without giving numbers, they demand that "public and family foundations should be given a tax system as attractive as the one they benefit from in neighboring countries," but also the possibility to increase this deductible portion in certain circumstances. These requests can take on a more technical form, such as the possibility to vary the rate depending on a donation's temporality or purpose. During Luginbühl's last intervention (14.470), he proposed the establishment of a favorable tax regime concerning bounties allocated to heirs at the beginning of the inheritance by giving them an increase in income tax threshold deductibility regarding donations following the year of death, or the year of partition of an estate, as well as the possibility to defer a donation to future tax periods, if the maximum allowable claim for charitable donation is exceeded.

Justifications for such amendments are two-fold. On the one hand, it would be necessary to increase the funds for public interest purposes in a context where the State, on its own, may not be able to achieve all social policies deemed necessary. Schiesser thus finds, to support his bill on Charitable Donations Tax, that the State is requested for a growing number of tasks but has limited financial resources to complete them all. (...) It is barely possible to find new financial resources (...). We also know that we have seen substantial personal fortunes be built up and some of their holders would be very willing to invest a fair amount to public benefit tasks that are still to this day financed solely by the State. However, Foundation Law and modernized tax laws should urge them to act in this way as is the case elsewhere!" On the other hand, it would be to show good face in comparison to legislations existing in other countries, specifically neighboring ones. As Schiesser wrote during his parliamentary initiative, referring to his proposal to open the possibility of amending a foundation's objectives, "Austrians have introduced a similar provision on the Law of private foundations; since then, the number of these latter have skyrocketed; the provision in question might not be completely foreign." Luginbühl also mentions in his motion the question of international tax

competition: "In these changing circumstances of financial policy and the real economy, the Federal Council is responsible for maintaining Switzerland's attractiveness for domestic and foreign foundations and for their founders. To that end, we call upon the Council to make adjustments and establish cooperation following new developments in Europe." However, there is no discussion on tax justice or its distortion.

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Political authorities demonstrate resistance to tax law evolution for donations

In reading the replies from the government to the different questions from Parliamentarians, we can see that there is a strong will for maintaining and defending the status quo. Although as previously stated, legislation has evolved since the 2000s. While in general concerned to promote State-approved legal persons considered as a public utility, public authorities put in mind how important it is to maintain a restrictive interpretation of public utility, of legal persons or activities enjoying tax benefits; otherwise, we risk distorting fair taxation. Thus, with the requests for an increase from shares in income (or profits) that could be deducted for tax purposes if given to organizations of public utility, the authorities reiterate [50] "that the economic capacity principle materializes the constitutional principle of equal treatment with the level of taxation. So, within the comprehensive taxation system of net income, this principle places the legislator under the obligation to tax people that actually obtain an income according to their financial capacity." The increase in tax deduction appears "contrary to the principle of taxation depending on taxpaying ability"; for them, "a wealthy taxpayer

giving donations to a foundation can indeed lower his global tax burden to the level of a taxpayer with a much more modest financial situation. In addition, such deductions would lead to favor taxpayers subject to high marginal tax rates at the expense of those with lower income levels.” To conclude, he stated that “the person granting a donation is not constrained in their economic capacity; on the contrary, this donation is the very expression of their capacity.”

Similarly, in response to the Luginbühl motion (09.3344), the Federal Council opposes the possibility to defer a donation to future periods to benefit from tax exemption on a total sum that otherwise would exceed the maximum allowable claim. For the Federal Council, “we must refuse the possibility of deferring a donation because it would lead to an unequal treatment in comparison to other deductions (...), it would complicate the tax system, and would lead to a significant amount of extra administrative workload for tax authorities.” Another unfortunate consequence of deferred donations would be that “it would not be easily understood by all taxpayers.” It is also worth noting that even if the arguments are varied (tax justice, concern to avoid making the tax system more complicated in its administrative organization, and for the sake of the tax system’s readability for citizens), the tax incentives issue as a public policy tool (in comparison with other public policy tool such as direct expenses) is either not or very rarely being called into question. The only time where it appears, in response to the Schiesser’s initiative, it is never to question the possible deletion of this tool but rather to justify not excessively increasing the benefits for donors.

“...the tax incentives issue as a public policy tool (in comparison with other public policy tool such as direct expenses) is either not or very rarely being called into question.”



Disconnected proposals

There seems to be a significant discrepancy between the debates within the political actors that we just mentioned, and the concerns of the authors, who proposed several reforms and are calling into question tax exemption incentives to foster public interest purposes. Where parliamentarians, lawyers and interest groups are proposing to increase incentives for donors as well as public interest organizations, and where public authorities seem to defend a status quo, the different authors instead suggest a limitation of these tax incentives.

First, from an administrative perspective, the issue of excessive administrative burdens created by tax deductions is raised by Peters [51]. Establishing that the policy supporting the tax incentive policy about donations for public utility or set for a public purpose, concerns 70% of taxpayers for an average amount donated of 660 francs, it is safe to question its relevance considering the workload it causes. Raising the question of the system of tax deductions’ complexity for the taxpayers and the significant administrative burden caused by the recording and the audit of the tax-deductible amounts for tax authorities, he offers two simplification measures. One possibility would be the abolition of deductions. If the tax loss caused by tax exemptions for charitable donations for the Confederation represents 1.84% of the direct federal tax (DFT), why wouldn’t we remove this exemption and lower the income tax rate threshold accordingly, or on the contrary, raise equivalently the number of direct programs for objectives pursued by this exemption? [52]

Another solution would be to grant flat-rate deductions on personal income instead of the existing tax deduction by calculating the standard values that could be attributed instead of the current figure, without affecting the Confederation's total tax receipts. Assuming that the taxpayers' level and income structure remain the same, Peters [53] proposes the sum of 950 CHF if only rightful beneficiaries only (namely those who currently use the deduction) are taken into account, or the amount of 740 CHF for each taxpayer if this flat-rate deduction was granted to all taxpayers, whether or not they currently use the deduction.

Beyond the issue of the administrative cost of exemption management, the authors are trying to answer to the question of tax justice, showing the unequal character of the tax exemption system for public benefit organizations. Since the aid granted is directly linked to the organizations' financial means (particularly wealthy), Niggly [54], proposed 60 years ago that the State collect taxes from all financial institutions and then redistribute them in the form of grants. For him, this tax exemption waiver in favour of an enlargement of subsidies would lead to economic aid, with grants being prioritized according to the respective merits of organizations and not based on their financial capacity. For his part, McDaniel proposes to limit the injustice by replacing the deduction by a tax credit to be considered as an income in and of itself. And as such should appear on your income tax return: "For example, if a tax credit of 100 dollars is granted, it must be included in the income declaration in year N+1. Thus, a taxpayer earning an income in the 20% tax rate, would pay 20 dollars of taxes on his tax credit and would gain an 80 dollar advantage on the tax grant after taxes. A taxpayer of the 15% tax rate,



on the other hand, would only pay 15\$ on his tax credit and would gain an 85 dollar advantage after taxes. The tax grant would then be progressive according to income." [55]

In the same vein, Thaler [56], 2017 Nobel prize winner in Economy, and Reich [57] also propose a system change in favour of a tax credit based on a single rate and for capped amounts. Starting with the premise that it is difficult to justify subsidizing donations from the wealthy more than those from the poor. Thaler explains that the unjust mechanism of tax deduction is based on an unfortunate analogy with businesses: "We are doing it because our tax system regards donations as "deductions" from income. We subtract it from income and pay taxes on the remainder. This way of proceeding is logical in the case of business expenses. Someone who owns a company must pay taxes only on benefits, not on income. However, it does not apply to charitable tax deductions as they do not represent a cost to business". [58] Hence, he proposes that the tax subsidy rates be the same for everybody. Therefore, this means that instead of being a tax deduction from income, the subsidy can be claimed as a tax credit, which ideally would be "refundable," thus payable even if the tax bill is negative or equal to zero. For Reich, this tax credit should be capped: "By offering an equivalent tax credit to all donors (let's say 25% of every donation), with the tax credit being capped at a certain level (let's say 1,000 dollars), the mechanism avoids inverted allowance structure, offers an equal credit to all donors, and of course, does nothing to hinder donors' freedom to continue donating money after reaching the ceiling, but with no state subsidy to do so." [59] Finally, Cagé [60] proposes a radical solution to encourage participation by all for supporting organizations of public utility without resorting to the distribution of tax benefits. She also reflected on inequalities linked to tax deductions but was concerned with strengthening civil society by supporting institutionalization and daily operation of public

Beyond the issue of the administrative cost of the exemption management, the authors are trying to answer to the question of tax justice

benefit organizations; she suggests exiting the system of tax deduction entirely but to allow each taxpayer through their income tax return to choose to which organization they wish to directly allocate a predefined amount of their taxes, which would be identical for each taxpayer, be it taxed or not.

What would happen if the solution she suggests was applied in Switzerland? If we divide the uncollected revenue by the Confederation through tax deductions applied to direct federal tax (DFT) (180 million according to Peters' [61] estimates, by the 5 million taxpayers), we get a total of 36 CHF which represents the tax share each taxpayer could decide to allocate freely to an organization of public utility of its choosing. It would be cost-neutral for the Confederation; the 180 million in tax loss would continue to be invested in organizations of public utility. The selection of organizations supported would be ascribed to all citizens rather than the wealthiest taxpayers, or of the Parliament alone.

Conclusion

Bringing to light the political science and economics literature, coupled with political interventions linked with the question of tax incentives favoring donations or organizations of public utility, reveals the irreconcilable contradictions between the debates taking place in these different fields.

Hypotheses that would explain the discrepancies between the problems that retain the attention of academics and those that interest lawyers, interest groups and politicians are plentiful,



“It is perhaps first and foremost because talking about charity or philanthropy makes the debate a bit difficult.”

This could be due to the technical nature of the subject, the question of tax incentives often being seen as legal rather political. The fact that the subject remains in the margins of the political agenda and no party has yet to take a strong position on these questions can also be part of the explanation. Or it is because in terms of tax exemptions, those on donations are only one of the 99 exemptions possible for taxes managed by the FTA [62] and only concerns a small proportion of the budget allocated to the Confederation, representing a total lower than 2% in tax revenues linked to the Direct Federal Tax (DFT) [63]. The lack of more accurate data regarding the amounts which these tax exemptions represent [reminder that the only known figures concern the FTA of natural persons] helps in no way.

It is perhaps first and foremost because talking about charity or philanthropy makes the debate a bit difficult. These notions seem to be too morally charged for it to be possible to easily weigh the pros and cons. As Bernholz et al. ironically write in their work dedicated to a moral and political limit of philanthropy, “if philanthropy is a positive thing, a precious moral behavior, a righteous character - then the more, the better. Philanthropy should be everywhere!” [64]. In fact, how does one oppose a phenomenon that is viewed so positively? If we do not undertake, beforehand, research on philanthropy’s political dimension [65], or a reflexion on the injustices concerning tax incentives which begs the question of the validity of their existence[3], this indeed seems difficult.

Notes

[1] Paul McDaniel, *Tax Expenditures as Tools of Government Action*, in Lester Salamon (eds), *Beyond Privatization : The tools of Government Action*, Washington, The Urban Institute Press, 1989, p. 167-195 ; Christopher Howard, « The Hidden Side of the American Welfare State », *Political Science Quarterly*, 108, 3, 1993, p. 403-436

Notes (continued)

- [2] Isaac William Martin, Ajay K. Mehrotra et Monica Prasad, *The new fiscal sociology : taxation in comparative and historical perspective*. Cambridge ; New York: Cambridge University Press, 2009 ; Marc Leroy, *L'impôt, l'État et la société : la sociologie fiscale de la démocratie interventionniste*. Paris: Économica, 2010
- [3] Christopher Howard, op. cit., p. 403-436; Jacob S. Hacker, *The divided welfare state : the battle over public and private social benefits in the United States*. New York: Cambridge University Press, 2002
- [4] Sophie Dubuisson-Quellier, *Gouverner les conduites*, Presses de SciencesPo, 2016
- [5] Lester Salamon, « The Changing Tools of Government Action. An Overview », in Lester Salamon (eds), *Beyond Privatization : The tools of Government Action*, Washington, The Urban Institute Press, 1989, p. 8
- [6] idem, p. 9
- [7] Paul McDaniel Paul, op. cit., p. 167-195
- [8] Our translation: "Tax administration officials are trained to be experts in Law and tax collectors; they are not trained experts in environmental programs, housing, energy economics or any other sectors of social and economic life into which tax expenditure programs have been introduced." Paul McDaniel, "Tax Expenditures as Tools of Government Action", in Lester Salamon (eds), *Beyond Privatization : The tools of Government Action*, Washington, The Urban Institute Press, 1989, p. 175
- [9] EFC (European Foundation Center), *Comparative Highlights of Foundation Laws* publié par l'European Foundation Center. Bruxelles, EFC, 2015
- [10] This report determines the following categories: arts, culture and preservation; environmental protection; civil and human rights; fight against discriminations; aid to the poor; humanitarian aid; development aid; refugee assistance; protection and support of children, youth or the elderly; assistance and protection of people with a handicap; protection of animals; science, research and innovations; education and training; consumer protection; amateur sports; etc.
- [11] Alexandre Lambelet, *La philanthropie*, Paris, Presses de SciencesPo, 2014
- [12] For a summary, consult: Giedre Lideikyte-Huber, « Philanthropy and taxation. Swiss legal framework and reform perspectives », *Expert Focus*, 3, 2018, p. 209-213.
- [13] Hans Rudolf Niggli, *Gemeinnützigkeit als Steuerbefreiungsgrund*, Dissertation, Bern, 1945; Georges Mettrau Georges, *L'exonération fiscale des institutions d'utilité publique*, Thèse de droit, Université de Lausanne, 1992, p. 61 et 106-119
- [14] Blaise Knapp, « Intérêt, utilité et ordre publics », in *Recueil du centenaire du Tribunal fédéral*, Bâle, 1975, p. 137 et ss. ; Blaise Knapp, « La collaboration des particuliers et de l'Etat à l'exécution des tâches d'intérêt général », *Mélanges Henri Zwahlen*, 1977, p. 363 ; Georges Mettrau, op. cit., p. 235
- [15] Sven Steinmo, « So What's Wrong with Tax Expenditures ? A Reevaluation Based on Swedish Experience », *Public Budgeting & Finance*, 6, 1986, pp. 27-44; Christopher Howard, « The Hidden Side of the American Welfare State », *Political Science Quarterly*, 108, 3, 1993, p. 403-436
- [16] While we focus on the DFT in this article, it is important to note that this tax is but one element of the Swiss tax system that represents but a small portion of income tax. By combining inter-cantonal variations, we can consider that the tax distribution between the different income tax authorities is as follows: the portion of federal tax in the total represents 20%, communal tax represents 32% and cantonal tax 48%.
- [17] For Switzerland's DFT tax scale: <https://www.estv.admin.ch/estv/fr/home/direkte-bundessteuer/direkte-bundessteuer/fachinformationen/tarife.htm>
- [18] Rob Reich, « Philanthropy and Caring for the Needs of Strangers », *Social Research*, 80, 2, 2013, p. 517-538.
- [19] Idem, p.523
- [20] AvenirSuisse, *Le monde des fondations en mouvement. Idées pour un mécénat moderne*. Genève / Zurich, Avenir Suisse, 2015, p. 18
- [21] Nathalie Monnet et Ugo Panizza, A Note on the Economics of Philanthropy. Working Paper. Genève, HEID, HEIDWP19-2017, 2017[22] For example: Martin Feldstein et Amy Taylor, The income tax and charitable contributions. *Econometrica: Journal of the Econometric Society*, 1976, p. 1201-1222 ; Martin Feldstein et Charles Clotfelter, Tax incentives and charitable contributions in the United States: A microeconomic analysis. *Journal of Public Economics* 5(1-2), 1976, p. 1-26 ; Gerald E. Auten, Holger Sieg et Charles Clotfelter, « Charitable giving, income, and taxes: An analysis of panel data ». *The American Economic Review*, 92(1), 2002, p. 371-382 ; Jon Bakija et Bradley T. Heim, « How does charitable giving respond to incentives and income? New estimates from panel data ». *National Tax Journal*, 64(2), 2011, p. 615
- [23] Paul McDaniel, op. cit., p. 184-185
- [24] Our translation: CFF, *Die Stiftungsaufsicht. Evaluation der Wirksamkeit der Aufsicht über die «klassischen» Stiftungen*, Contrôle fédéral des finances, EFK-15570 / inkl. Stellungnahmen / 9. Februar, 2017, p. 46
- [25] Idem
- [26] Idem
- [27] AFC/DFP, *Quels sont les allègements fiscaux accordés par la Confédération ? Rapport de l'Administration fédérale des contributions AFC du 02.02.2011*, <https://www.estv.admin.ch/estv/fr/home/allgemein/steuerpolitik/fachinformationen/abstimmungen/steuerverguenstigungen.html>, 2011
- [28] OCDE, *The Choice Between Base Broadening And Tax Incentives : Tax Expenditures In OECD Countries*. Note de Joseph J. Minarik, 2008, p. 5-10.
- [29] "In Switzerland, the tax relief treatment differs in several ways from the treatment of this topic in other countries: the first report on subsidies with considerations on tax reliefs was only published in 1997. It shows that political circles have long been considered as secondary. Furthermore, the set range (up to 6 years) established in the USL in 1990 for report's publication is very long by international standards: international use does indeed provide an annual review"(AFC/DFP, 2011).
- [30] These studies are, for one, on incentives in the energy field, for the other on advanced training. It is: Econcept: Evaluation energiepolitisch motivierter Steuererleichterungen, 1997; Stefan Wolter, „Die steuerliche Behandlung der Kosten für die Aus- und Weiterbildung – Analyse der Anreiz- und Verteilungswirkungen sowie anderen Effekten von Massnahmen zur Förderung der Aus- und Weiterbildung in der Schweiz“, a short expertise completed by the FTA, 2008.
- [31] Rob Reich, « Toward a Political Theory of Philanthropy », in Patricia Illingworth, Thomas Pogge et Wenar Leif (eds). *Giving Well. The Ethics of Philanthropy*, Oxford, Oxford University Press, 2011, p. 177-195; Rob Reich, 2013, p. 517-538.
- [32] Rob Reich, 2013, p. 534.
- [33] Julia Cagé, *Le prix de la démocratie*, Paris Fayard, 2018
- [34] Idem, p. 161. It should be noted that Cagé is not entirely fair with Rob Reich. As a matter of fact, if he supports "pluralistic rationalism (pluralism)" in philanthropy, he proposes to modify simultaneously the current system, to limit the "plutocratic bias." On this specific point, see below.
- [35] Rob Reich, 2011, p. 188
- [36] cf. Alexandre Lambelet, 2014
- [37] Julia Cagé, op. cit., p. 337
- [38] AFC/DFP, *Quels sont les allègements fiscaux accordés par la Confédération ? Rapport de l'Administration fédérale des contributions AFC du 02.02.2011*, <https://www.estv.admin.ch/estv/fr/home/allgemein/steuerpolitik/fachinformationen/abstimmungen/steuerverguenstigungen.html>, 2011, p. 2-3
- [39] Federal Council's opinion dated December 5th, 2003
- [40] Alexandre Lambelet, 2014, p. 43-60
- [41] Fondation Lombard Odier et FSG, *Advancing Philanthropy in Switzerland*, 2ème édition, Genève, Fondation Lombard Odier, 2013
- [42] AvenirSuisse, op. cit.
- [43] idem, p. 37
- [44] The principal of taxation according to the contributive capacity is the

Notes (continued)

most important principle of the Western tax system and the strongest argument against all forms of tax incentives, including “philanthropic” ones. This principle requires that each citizen contribute to the covering of public expenditures, taking into account their personal situation and in proportion to their means. On this point, refer to Xavier Overson, *Droit fiscal suisse*, 4ème édition, Bâle, Helbing Lichtenhahn, 2012.

[45] For example: Parisima Vez, *La fondation : lacunes et droit désirable : une analyse critique et systématique des articles 80 à 89 CC*, Berne, Staempfli, 2004 ; Thomas Sprecher, « Traitement fiscal de nouveaux modèles de soutien et de financement », *Rapport sur les fondations en Suisse 2013*, Bâle /Zurich, CEPS, SwissFoundations, Uni Zurich, 2013, p. 19-23

[46] Xavier Oberson, "The taxation of philanthropy in Switzerland: Current status and suggestions", *IBFD Bulletin for International Taxation*, 69, 4-5, 2015, p. 233-239.

[47] Georges Mettrau, *op. cit.*, p. 30

[48] Xavier Oberson, *op. cit.*, p. 235

[49] This article takes place within the context of a larger research entitled *[Les frontières de l'Etat social en Suisse. Administrations fiscales, fondations philanthropiques et reconnaissance d'utilité publique]*, led by the authors of the current article and financed by the *Fonds national suisse de la recherche scientifique (FNS, projet Division 1 n°162836)*. All the interventions in Parliament since 2000 have been analysed in this framework: this article specifically focusing on tax exemptions as a public policy tool, here only three approaches are mobilized.

[50] Parliamentary initiative Revised Law of Foundations (Schuessler). Council's Commission for Economic Affairs and Taxation Commission report from October 23rd, 2003. Federal Council's opinion dated December 5th, 2003.

[51] Rudi Peters, *Les déductions de l'imposition fédérale directe des personnes physiques et les possibilités de simplification - Une analyse des données fiscales du canton de Berne, année 2005*. Berne, AFC/DFF, 2009

[52] If Peters (2009) seems to advocate for the first solution, instead McDaniel encourages the second one: « Such great cuts might be completely justified, but they tend to have us believe that each tax expenditure program cut back or eliminated was actually an unwanted federal program (...). Other options were available concerning the use of these funds; for example, they could have been used to fund other expenditure programmes or to reduce the government deficit. It is interesting to note that when tax expenditures are reduced, there may be the automatic assumption that increased revenues should be directed to tax relief rather than to one of the other two objectives.” (McDaniel, 1989 : 179).

[53] Rudi Peters, *op. cit.*, p. 47

[54] Hans Rudolf Niggli, *op. cit.*, p. 31

[55] Paul McDaniel, *op. cit.*, p. 189.

[56] Richard H. Thaler, « It's Time to Rethink the Charity Deduction », *The New York Times*, 18.12.2010

[57] Rob Reich, 2011, p. 177-195

[58] Richard H. Thaler, *op. cit.* For Thaler, « a charitable donation does not reduce an income, so it should not be deducted from an income tax, but it will reduce a legacy ».

[59] Rob Reich, 2011, p. 191

[60] Julia Cagé, *op. cit.*

[61] Rudi Peters, *op. cit.*

[62] AFC/DFF, *op. cit.*

[63] Rudi Peters, *op. cit.*

[64] Lucy Bernholz, Chiara Cordelli et Rob Reich, « Introduction. Philanthropy in Democratic Societies », in Reich Rob, Cordelli Chiara et Bernholz Lucy (eds), *Philanthropy in Democratic Societies. History, Institutions and Values*. Chicago, University of Chicago Press, 2016, p. 12

[65] Alexandre Lambelet, 2014 ; Alexandre Lambelet, « La philanthropie : usages du terme et enjeux de luttes ». *ethnographiques.org*, 34 [en ligne], 2017, <http://www.ethnographiques.org/2017/Lambelet>

[66] Rob Reich, 2013, p. 517-538.

